
(1939) 07 BOM CK 0002
In the Bombay High Court
Case No : O.C.J. Suit No. 1915 of 1938

The Western Electric Company, Limited	APPELLANT
Vs	
Kailas Chand	RESPONDENT

Date of Decision : 20-07-1939

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3
Contract Act, 1872 — Section 30

Citation : AIR 1940 Bom 60 : (1939) 41 BOMLR 1290

Hon'ble Judges : Kania, J

Bench : Single Bench

Judgement

Kania, J.—This is a motion for recording a compromise. The terms of the compromise, which are reduced to writing, are not disputed. They are found in two letters which are annexed to the affidavit filed in support of the motion. On behalf of the plaintiffs, who oppose this application, it is urged that their consent was obtained on a representation that the Northern India Development Corporation Ltd., who were to pass a writing under the agreed terms promising to pay Rs, 6,500 to the plaintiffs by monthly instalments of Rs. 200 and Rs. 300, was in a sound financial condition. It is alleged that that representation was false to the knowledge of the agent of the defendants who came to effect the compromise. It is alleged that the corporation held a meeting in the middle of April, 1939, and passed a resolution to go into voluntary liquidation. The company later on has been ordered to be wound up subject to the supervision of the Court. Having regard to the short period within which the company went into liquidation it is contended that the representation was false to the knowledge of the agent and therefore the compromise is voidable at the instance of the plaintiffs. The alleged representation is denied. The dispute is whether on this application the plaintiffs should be allowed to go into that question at all.

2. The notice of motion to record the compromise is taken out under Order XXIII, Rule 3, of the Civil Procedure Code, which (omitting the words which are inapplicable) states that where it is proved to the satisfaction of the Court that a

suit has been adjusted wholly or in part by any lawful agreement or compromise, the Court shall order such agreement or compromise to be recorded and shall pass a decree in accordance therewith so far as it relates to the suit. The words of that rule show that the Court has to be satisfied on two points : first, that there was an agreement between the parties, and, secondly, that it was lawful. The document put forward in the present case is not disputed and the agreement is thus proved. The other question is whether it is lawful. On behalf of the defendants it is urged that "lawful" means "according to law." The learned Advocate General for the defendants in the course of the argument drew my attention to Qadri Jahan Begam v. Fazal Ahmad ILR (1928) All. 748 and Husain Yar Bag v. Radha Kishem ILR (1934) All. 426 In those cases proceedings were adopted under Order XXIII, Rule 3, and the contention of the opponents was that the agreements were voidable by reason of facts extraneous to the terms of the agreements themselves. The observations of the learned Judges in those cases show that an enquiry showing that the agreements were voidable is not within the purview of Order XXIII, Rule 3. In the former case it was observed as follows (pp. 751-52):

..the word "lawful" in Order XXIII, Rule 3, does not merely mean binding or enforceable the word "lawful"...refers to agreements which in their very terms or nature are not "unlawful," and may therefore include agreements which are voidable at the option of one of the parties thereto because they have been brought about by undue influence, coercion or fraud.

3. With respect I am unable to accept the full meaning of the words used there. If an agreement put before the Court as a compromise on the face of it was a wagering agreement and therefore void u/s 30 of the Indian Contract Act, in my opinion, it will not be a, lawful agreement because on the face of it is an agreement which the Court will not enforce. The provisions of Order XXIII, Rule 3, require the Court to record a lawful agreement and it has no option but to pass a decree in accordance with it. A compromise which is so put forward stands on the same footing as a contract between the parties. If at the ex parte hearing of a suit filed to enforce an agreement which on the face of it appeared to the Court to be void, I think the Court would refuse to pass a decree, to enforce that contract. In the same way if a wagering agreement was put forward as a compromise to the suit, I see no reason why the Court should not hold that it is not a lawful agreement and thus refrain from recording it or passing a decree in accordance with it. Therefore, the term "lawful agreement" as used in Order XXIII, Rule 3, excludes not only unlawful agreements, i.e. the object or consideration for which is unlawful as defined in the Indian Contract Act, but all agreements which on the face of them are void and therefore will not be enforced by the Court. For this purpose no inquiry is necessary because the terms of the agreement themselves will show the defect. The Court therefore has to consider whether on the face of the agreement it is lawful or not as stated above. With that reservation I respectfully agree with the two Allahabad decisions mentioned above.

4. An application under Order XXIII, Rule 3, is in the nature of an interlocutory proceeding and normally it will certainly be inconvenient to treat it as if it were a suit where all evidence which will make the agreement voidable by reason of the provisions of the Indian Contract Act will be led. But that will not be a sufficient answer to refuse to take into consideration the plea whether an agreement is voidable or not. That contention must stand or fall by reason of the wording of Order XXIII, Rule 3. I am unable to construe the word "lawful" as wide enough to include an enquiry whether the agreement is voidable at the instance of one party. In my opinion it includes only two classes of agreements : those which are unlawful and those which on their face are void and therefore not capable of being enforced. Under the circumstances the opposition fails. If the plaintiffs have any grievance in respect of the agreement their remedy is to file a suit to set aside the agreement and the decree. They are not prevented from doing so by this judgment.

5. The agreement which is contained in the letters of March 10 and 12, 1939, which are put in and marked No, 1 is recorded, and a decree is passed in accordance therewith. Plaintiffs to pay the costs of this motion and decree.